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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,430	01/12/2001	Lee R. Bolduc	105-C1	1423

27777 7590 10/26/2004

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EXAMINER

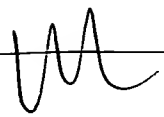
PANTUCK, BRADFORD C

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 10/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/759,430	Applicant(s) BOLDUC ET AL. 	
	Examiner Bradford C Pantuck	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 August 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 14-30 and 36-60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-30 and 36-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>03/09/04, 07/23/04</u> | 6) <input checked="" type="checkbox"/> Other: <u>IDS 03/30/2004</u>                     |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 14-30 and 36-60 rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 5,695,504 to Gifford, III et al.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

2. Regarding Claims 14, 30, 36, 38, 39, 41, 55, 56, 58, and 60 Gifford discloses a method for anastomosing a first vessel (254) to a second vessel (255). The anastomosis device (628) has several openings (“slots” 629), which each separately hold a separate shape memory securing element (622). Each opening (629) maintains the securing element (622) in a biased shape [Column 59, lines 7-10; Fig. 46A]. The securing elements are held in the biased configuration [see Fig. 46A] in the openings (629) and then inserted through aperture in the second vessel (255). Finally, Gifford

permits the plurality of tissue securing elements (622) to go from the biased (straight) configuration [Fig. 46A] to the unbiased configuration shown in Fig. 46D.

3. Regarding Claims 20, 21, 29, 45, 46, 50, 51, 57, Gifford discloses everting the end (259) of the first vessel (254) [Fig. 46A; Column 57, line 40]. The everted vessel is attached onto member (628) and then inserted into the hole in the aorta. The securing element (as shown in Fig. 46B) is compressing the hub, the first vessel, and the second vessel, all adjacent the aperture.
4. Regarding Claims 15 and 16, the elements have not penetrated the second vessel in the moment between Fig. 46A and Fig. 46B.
5. Regarding Claim 17, Gifford discloses connecting a vascular conduit to the aorta [Column 5, lines 33-35].
6. Regarding Claims 18 and 28, the distal end of member (628) can be considered a hub, as claimed. The everted end is passed through the hub.
7. Regarding Claims 19, 25, 26, 27, and 42, Fig. 46B shows the tissue securing elements compressing the vessels adjacent to the opening. The securing members (623/622) pierce the whole everted end of the first vessel.
8. Regarding Claims 22-24, 47-49, 52-54, the vessel is everted at various different angles, including less than 90 degrees, more than 90 degrees, and equal to 90 degrees [see Fig. 46A].
9. Regarding Claim 37, two of Gifford's plurality of tissue elements can be considered "barbs," and engage tissue.

10. Regarding Claims 40, 44, and 59, "fingers 631" act as plungers, sliding through the slots/apertures and pushing the staples out [Column 59, lines 18-21].
11. Regarding Claim 43, Gifford withdraws his anastomosis device after the procedure.

### *Conclusion*

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

### *Response to Arguments*

13. Applicant's arguments, see Arguments, filed 08/09/2004, with respect to the rejection(s) of claim(s) 14-30 and 36-60 under 35 U.S.C. 102(e) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn.

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However, upon further consideration, a new ground(s) of rejection is made in view of U.S. Patent No. 5,695,504 to Gifford, III et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradford C Pantuck whose telephone number is (703) 305-8621. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (703) 308-2154. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BCP  
October 21, 2004

  
ANH TUAN T. NGUYEN  
PRIMARY EXAMINER  
10/25/04